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701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202 434 7300
202 434 7400 fax
www.mintz.com

Frank W. Lloyd
Direct Dial Number: 202/434-7309
Internet Address: fwllloyd@mintz.com

June 11, 2001

Via Hand Delivery

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
455 12th St., S.W., Room TW-A325
Washington, DC 20554

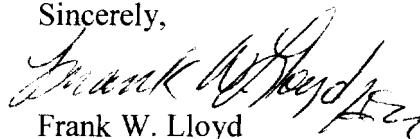
Re: Comments of Cablevision Systems Corporation on Further Notice of Proposed Rulemaking, CS Docket No. 98-120

Dear Ms. Salas:

Enclosed for filing please find an original and four (4) copies of the Comments of Cablevision Systems Corporation on Further Notice of Proposed Rulemaking. Also enclosed is an extra copy to be date-stamped and returned to our courier.

Please do not hesitate to contact me with any questions.

Sincerely,


Frank W. Lloyd

FWL/tsk
Enclosures

cc: International Transcription Service, Inc.

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Carriage of Digital Television)
Broadcast Signals)
)
Amendments to Part 76)
of the Commission's Rules)

CS Docket No. 98-120

**COMMENTS OF CABLEVISION SYSTEMS CORPORATION
ON FURTHER NOTICE OF PROPOSED RULEMAKING**

Of Counsel:
Elizabeth Losinski
Vice President, Cable Policy
CABLEVISION SYSTEMS
CORPORATION
1111 Stewart Avenue
Bethpage, NY 11714
(516) 803-2387

Howard J. Symons
Frank W. Lloyd
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY and POPEO, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

June 11, 2001

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**COMMENTS OF CABLEVISION SYSTEMS CORPORATION
ON FURTHER NOTICE OF PROPOSED RULEMAKING**

Cablevision Systems Corporation ("Cablevision") submits these comments in response to the FCC's Further Notice of Proposed Rulemaking in this proceeding, issued on January 23, 2001. Cablevision is the seventh largest operator of cable television systems in the United States. It has over 3 million subscribers in systems clustered in the New York/New Jersey/Connecticut DMA. Cablevision is also one of the most active creators of diverse national, regional and local programming services carried on its own and other cable systems (as well as on satellite services), through its programming arm, Rainbow Media Holdings, Inc. ("Rainbow"). For the reasons outlined below, Cablevision, consistent with the FCC's tentative conclusions in its January First Report and Order, maintains strongly that dual must carry requirements would negatively impact consumers by depriving customers of valuable programming and significantly harming Cablevision's investment in innovative programming and new video services.

The FCC in its Further Notice seeks comment on a variety of issues relating to the carriage by cable operators of digital television stations. These include the constitutional standard to be applied, the harm to broadcasters, if any, from failure to adopt a mandatory dual carriage requirement, and, most importantly to Cablevision, the harm to cable operators from

adopting such a requirement. In addition to these important issues, it is equally important that the FCC consider the First Amendment interests of cable programmers, such as Rainbow, and the adverse effect of a dual must-carry regime on such programmers.

I. Imposing A Dual Must-Carry Regime Would Substantially Decrease Diversity and Localism

As the FCC itself noted in its January First Report and Order, any digital must-carry regulations adopted during the transition period would be difficult to constitutionally support under the Supreme Court's First Amendment standard in the *Turner* decisions.^{1/} Such regulations would also be highly vulnerable under the "takings" clause of the Fifth Amendment. These constitutional difficulties relating to digital must carry are sufficient reason alone for the FCC to let the free marketplace drive the development of, and demand for, digital services.

To impose dual must-carry now would place the broad diversity of programming offerings that cable consumers currently enjoy in extreme peril. Broadcasters already today hold a preferred grip on a large portion of the analog channels of Cablevision and other cable operators. In New York City, for example, 24 of Cablevision's 80 channels on its Bronx and Brooklyn systems are currently earmarked for analog broadcasters and public, educational and governmental access. Seven commercial stations and three noncommercial stations (10 in total) have must-carry rights on these systems today. To give each of these stations a second must-carry channel would double their burden on Cablevision's editorial speech function, and lead customer dissatisfaction as valuable and unique programming is displaced by duplicative required programming.

^{1/} *Turner Broadcasting Sys., Inc. v. FCC*, 512 U.S. 622 (1994) ("*Turner I*"); *Turner Broadcasting Sys., Inc. v. FCC*, 520 U.S. 180 (1997) ("*Turner II*").

A. Cablevision Is Using Its Current And Anticipated Bandwidth For Unique and Diverse Services.

Cablevision's response to Cable Services Bureau's recent channel capacity survey, submitted on May 29, 2001, noted that Cablevision is in the midst of a five-year plan to upgrade the network infrastructure throughout its region to a fully two-way 750 minimum MHz platform. As Cablevision has rebuilt, it has been aggressively rolling out its high-speed data offering, and will launch digital television with the deployment of an advanced digital set top box and interactive services this fall. Designed and engineered in cooperation with Sony Corporation, this digital set top box will offer customers a new television experience with interactive television, high definition television, video-on-demand and IP telephony.

Cablevision expects that the bandwidth for downstream transmission on its 750 MHz platform not allocated to analog television (528 MHz) or data and telephony services (24 MHz) will be allocated among several digital offerings -- original high definition (HDTV) programming, video-on-demand, interactive television, digital sports, digital music, and standard definition digital television. The company's digital plans allow for reallocation of bandwidth among the different digital service offerings in response to market interest and demand or the development of additional new services.

Cablevision has invested billions of dollars in expanding its infrastructure and developing this set top box in order to be positioned to offer ITV services. It is now actively exploring business arrangements with a variety of ITV applications and content providers -- both affiliated and unaffiliated -- in order to be able to offer subscribers compelling and user-friendly ITV services and features that will make effective use of the available bandwidth. This bandwidth will be fully utilized by Cablevision for the benefit of its subscribers.

B. Cablevision Is A Leader In Offering Local Programming

Over the past 20 years, Cablevision has been a leader in developing innovative content services which target national, regional, and local interests. Given the limitation on channel capacity on cable operators platforms, forced cable carriage of broadcaster DTV channels should not be compelled because of the identity of the programmer rather than the merits of the programming. Like any other cable program supplier, a broadcaster should earn its carriage by bringing something unique to the marketplace. It should not be given superior cable carriage rights, at the expense of programming services that are either created by, or selected by, a cable operator in the exercise of its press function. Such cable-selected or cable-created services may offer much greater diversity and even a greater degree of the “localism” that broadcasters most loudly trumpet.

Cablevision, for example, created the nation’s first 24 hour per day regional cable news service, News 12 Long Island, during the 1980’s. It has since replicated this service in four other New York City metropolitan areas. News 12 Long Island services Nassau and Suffolk Counties, News 12 Westchester County, News 12 The Bronx services the Bronx, News 12 Connecticut services the Fairfield County, Connecticut area, and News 12 New Jersey services northern and central New Jersey. These networks provide news intended specifically for residents of the areas they reach, including live coverage of breaking news events in the community. In 2000, News 12 garnered 13 New York Emmys.

Cablevision also launched its Metro Channels in 1998. This has been hailed as a unique example of cable’s commitment to “hyperlocalism.”^{2/} Today Metro Traffic and Weather is the

^{2/} See “Dolan’s ‘Hyperlocalism,’” Multichannel News, October 5, 1998 at 52. See also “HDTV: Not worth Losing C-Span,” The Washington Post, July 23, 1998 at A19.

tri-state area's only 24-hour traffic, transit and weather channel, with an extensive network of live traffic cameras, providing the best route home. Cablevision has also launched Neighborhood News channels serving specific towns and villages on Long Island with "hyperlocal" news programming such as local school reports, community events, and business development coverage.

Granting broadcaster's digital television signals dual must-carry status is highly unlikely to result in any net increase whatsoever in local broadcast programming. Forcing cable operators to devote valuable channel capacity to duplicative signals will actually lessen the chance for new locally oriented cable programming to obtain carriage. This would be extremely inopportune timing for the many new programming services developed by cable operators around the nation that are devoted to issues of local interest, such as Rainbow's Metro and News 12 channels, which are in the process of seeking channel space from other cable systems in their regions.

C. Cablevision Is Also A Leader in HDTV Programming

Rainbow is also producing its own HDTV programming. And other cable programmers like HBO are doing likewise. Rainbow has an HDTV service that provides live events programming from Radio City Music Hall and Madison Square Garden. Cablevision's sports services broadcast the home games of the New York Knicks, Yankees, Rangers and Liberty and the New Jersey Devils and Nets in HDTV. This programming should have no lesser ability and right to seek and gain carriage on Cablevision's cable systems or on other cable operator's cable systems than a local broadcaster's digital channel that may only be broadcasting in a less robust format than full HDTV.

D. Cablevision Is Developing Interactive Content for Its Digital Service

Cablevision is actively pursuing content opportunities with both affiliated and unaffiliated providers to develop interactive content designed for the unique viewing experience of the

television set. Leveraging its expertise in developing and marketing new programming services, Cablevision is searching for ways to make interactive television the most powerful new medium developing today. As an example, Cablevision is expanding its popular Power To Learn service for schools and libraries, which already provides unique content for the Internet and is developing a version designed for the digital set top box.

II. No Important Governmental Interest Would Be Served By Requiring Dual Must-Carry During the Transition To Digital TV

The government clearly cannot demonstrate any important interest that requires further interference with cable operators' right of free speech beyond the limited scope of today's analog must carry rules. It is highly doubtful whether the programming offered by digital broadcasters is likely to be sufficiently unique to merit further overriding of the First Amendment rights of cable operators and cable programmers in the necessary First Amendment calculus required by Turner.

Cablevision has committed millions of dollars to its local channels. Cable programmers and operators in many other areas also offer regional and local programming. If digital broadcasters have a right to any available channel space, Cablevision's News 12 and MetroChannels, and similar cable efforts nationwide, cannot hope for greater carriage.

The FCC cannot, on the record before it, demonstrate that dual mandatory carriage requirements are a narrowly tailored way of achieving any legitimate governmental goals. Moreover, under these circumstances, any attempt by the government to "take" a cable operator's channels without compensation would be held unconstitutional.

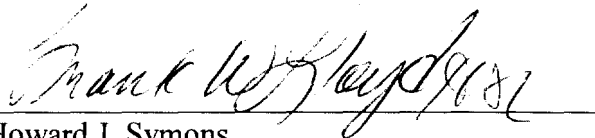
CONCLUSION

Cablevision is a strong supporter of the national move to digital electronic media and is expending billions on its evolution. It continues to believe, however, that the best means to ensure a smooth, successful transition to this era is to let technology and the marketplace, not regulation, drive it.

Respectfully submitted,

CABLEVISION SYSTEMS CORPORATION

By:



Howard J. Symons

Frank W. Lloyd

MINTZ, LEVIN, COHN, FERRIS,

GLOVSKY and POPEO, P.C.

701 Pennsylvania Avenue, N.W.

Suite 900

Washington, D.C. 20004

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Of Counsel:

Elizabeth Losinski

Vice President, Cable Policy

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